

House Engrossed

environmental quality omnibus

State of Arizona  
House of Representatives  
Fifty-fifth Legislature  
First Regular Session  
2021

## CHAPTER 88

# HOUSE BILL 2580

AN ACT

REPEALING SECTIONS 41-791.03, 41-1291 AND 41-1291.01, ARIZONA REVISED STATUTES; AMENDING SECTIONS 49-202, 49-250, 49-289.01, 49-289.03, 49-405, 49-425 AND 49-426.06, ARIZONA REVISED STATUTES; REPEALING SECTION 49-426.08, ARIZONA REVISED STATUTES; AMENDING SECTION 49-459, ARIZONA REVISED STATUTES; REPEALING SECTIONS 49-542.06 AND 49-542.07, ARIZONA REVISED STATUTES; AMENDING SECTIONS 49-545, 49-724 AND 49-831, ARIZONA REVISED STATUTES; REPEALING SECTIONS 49-834, 49-902, 49-903, 49-904 AND 49-905, ARIZONA REVISED STATUTES; AMENDING SECTIONS 49-923, 49-929 AND 49-964, ARIZONA REVISED STATUTES; RELATING TO THE ENVIRONMENT.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Repeal

3 Sections 41-791.03, 41-1291 and 41-1291.01, Arizona Revised  
4 Statutes, are repealed.

5 Sec. 2. Section 49-202, Arizona Revised Statutes, is amended to  
6 read:

7 49-202. Designation of state agency

8 A. The department is designated as the agency for this state for  
9 all purposes of the clean water act, including section 505, the resource  
10 conservation and recovery act, including section 7002, and the safe  
11 drinking water act. The department may take all actions necessary to  
12 administer and enforce these acts as provided in this section, including  
13 entering into contracts, grants and agreements, ~~the adoption, modification~~  
14 ~~ADOPTING, MODIFYING~~ or ~~repeal of~~ ~~REPEALING~~ rules, and initiating  
15 administrative and judicial actions to secure to this state the benefits,  
16 rights and remedies of such acts.

17 B. The department shall process requests under section 401 of the  
18 clean water act for certification of permits required by section 404 of  
19 the clean water act in accordance with subsections C through ~~H~~ I of this  
20 section. Subsections C, ~~and D, subsection E, paragraph 3, subsection F,~~  
21 ~~paragraph 3~~ G and ~~subsection H~~ I of this section apply to the  
22 certification of nationwide or general permits issued under section 404 of  
23 the clean water act. If the department has denied or failed to act on  
24 certification of a nationwide permit or general permit, subsections C  
25 through ~~H~~ I of this section apply to the certification of applications  
26 for or notices of coverage under those permits.

27 C. The department shall review the application for section 401  
28 certification solely to determine whether the effect of the discharge will  
29 comply with the water quality standards for navigable waters established  
30 by department rules adopted pursuant to section 49-221, subsection A, and  
31 section 49-222. The department's review shall extend only to activities  
32 conducted within the ordinary high watermark of navigable waters. To the  
33 extent that any other standards are considered applicable pursuant to  
34 section 401(a)(1) of the clean water act, certification of these standards  
35 is waived.

36 D. The department may include only those conditions on  
37 certification under section 401 of the clean water act that are required  
38 to ensure compliance with the standards identified in subsection C of this  
39 section. The department may impose reporting and monitoring requirements  
40 as conditions of certification under section 401 of the clean water act  
41 only in accordance with department rules.

42 ~~E. Until January 1, 1999:~~

43 ~~1. The department may request supplemental information from the~~  
44 ~~section 401 certification applicant if the information is necessary to~~  
45 ~~make the certification determination pursuant to subsection C of this~~

~~section. The department shall request this information in writing within thirty calendar days after receipt of the application for section 401 certification. The request shall specifically describe the information requested. Within fifteen calendar days after receipt of the applicant's written response to a request for supplemental information, the department shall either issue a written determination that the application is complete or request specific additional information. The applicant may deem any additional requests for supplemental information as a denial of certification for purposes of subsection H of this section. If the department fails to act within the time limits prescribed by this subsection, the application is deemed complete.~~

~~2. The department shall grant or deny section 401 certification and shall send a written notice of the department's decision to the applicant within thirty calendar days after receipt of a complete application for certification. Written notice of a denial of section 401 certification shall include a detailed description of the reasons for denial.~~

~~3. The department may waive its right to certification by giving written notice of that waiver to the applicant. The department's failure to grant or deny an application within the time limits prescribed by this section is deemed a waiver of certification pursuant to this subsection and section 401(a)(2) of the clean water act.~~

~~F. Beginning January 1, 1999:~~

~~1. E.~~ E. The department may request supplemental information from the section 401 certification applicant if the information is necessary to make the certification determination pursuant to subsection C of this section. The department shall request this information in writing. The request shall specifically describe the information requested. After receipt of the applicant's written response to a request for supplemental information, the department shall either issue a written determination that the application is complete or request specific additional information. The applicant may deem any additional requests for supplemental information as a denial of certification for purposes of subsection ~~H~~ I of this section. In all other instances, the application is complete on submission of the information requested by the department.

~~2. F.~~ F. The department shall grant or deny section 401 certification and shall send a written notice of the department's decision to the applicant after receipt of a complete application for certification. Written notice of a denial of section 401 certification shall include a detailed description of the reasons for denial.

~~3. G.~~ G. The department may waive its right to certification by giving written notice of that waiver to the applicant. The department's failure to act on an application is deemed a waiver pursuant to this subsection and section 401(a)(2) of the clean water act.

~~4. H.~~ H. The department shall adopt rules specifying the information the department requires an applicant to submit under this section in order

1 to make the determination required by subsections C and D of this section.  
2 Until these rules are adopted, the department shall require an applicant  
3 to submit only the following information for certification under this  
4 section:

5 1. The name, address and telephone number of the applicant.

6 2. A description of the project to be certified, including an  
7 identification of the navigable waters in which the certified activities  
8 will occur.

9 3. The project location, including latitude, longitude and a legal  
10 description.

11 4. A United States geological service topographic map or other  
12 contour map of the project area, if available.

13 5. A map delineating the ordinary high watermark of navigable  
14 waters affected by the activity to be certified.

15 6. A description of any measures to be applied to the activities  
16 being certified in order to control the discharge of pollutants to  
17 navigable waters from those activities.

18 7. A description of the materials being discharged to or placed in  
19 navigable waters.

20 8. A copy of the application for a federal permit or license that  
21 is the subject of the requested certification.

22 ~~H.~~ I. Pursuant to title 41, chapter 6, article 10 an applicant for  
23 certification may appeal a denial of certification or any conditions  
24 imposed on certification. Any person who is or may be adversely affected  
25 by the denial of or imposition of conditions on the certification of a  
26 nationwide or general permit may appeal that decision pursuant to title  
27 41, chapter 6, article 10.

28 ~~I.~~ J. Certification under section 401 of the clean water act is  
29 automatically granted for quarrying, crushing and screening of nonmetallic  
30 minerals in ephemeral waters if all of the following conditions are  
31 satisfied within the ordinary high watermark of jurisdictional waters:

32 1. There is no disposal of construction and demolition wastes and  
33 contaminated wastewater.

34 2. Water for dust suppression, if used, does not contain  
35 contaminants that could violate water quality standards.

36 3. Pollution from the operation of equipment in the mining area is  
37 removed and properly disposed.

38 4. Stockpiles of processed materials containing ten ~~per cent~~  
39 PERCENT or more of particles of silt are placed or stabilized to minimize  
40 loss or erosion during flow events. ~~As used in~~ FOR THE PURPOSES OF this  
41 paragraph, "silt" means particles finer than 0.0625 millimeter diameter on  
42 a dry weight basis.

43 5. Measures are implemented to minimize upstream and downstream  
44 scour during flood events to protect the integrity of buried pipelines.

1           6. On completion of quarrying operations in an area, areas denuded  
2 of shrubs and woody vegetation are revegetated to the maximum extent  
3 practicable.

4           ~~J.~~ K. For purposes of subsection ~~I~~ J of this section, "ephemeral  
5 waters" means waters of the state that have been designated as ephemeral  
6 in rules adopted by the department.

7           ~~K.~~ L. Certification under section 401 of the clean water act is  
8 automatically granted for any license or permit required for:

9           1. Corrective actions taken pursuant to chapter 6, article 1 of  
10 this title in response to a release of a regulated substance as defined in  
11 section 49-1001 except for those off-site facilities that receive for  
12 treatment or disposal materials that are contaminated with a regulated  
13 substance and that are received as part of a corrective action.

14           2. Response or remedial actions undertaken pursuant to chapter 2,  
15 article 5 of this title or pursuant to CERCLA.

16           3. Corrective actions taken pursuant to ~~chapter 5, article 1 of~~  
17 ~~this title or~~ the resource conservation AND recovery act of 1976, as  
18 amended (42 United States Code sections 6901 through 6992).

19           4. Other remedial actions that have been reviewed and approved by  
20 the appropriate government authority and taken pursuant to applicable  
21 federal or state laws.

22           ~~I.~~ M. The department of environmental quality is designated as the  
23 state water pollution control agency for this state for all purposes of  
24 CERCLA, except that the department of water resources has joint authority  
25 with the department of environmental quality to conduct feasibility  
26 studies and remedial investigations relating to groundwater quality and  
27 may enter into contracts and cooperative agreements under section 104 of  
28 CERCLA for such studies and remedial investigations. The department of  
29 environmental quality may take all action necessary or appropriate to  
30 secure to this state the benefits of the act, and all such action shall be  
31 taken at the direction of the director of environmental quality as ~~his~~ THE  
32 DIRECTOR'S duties are prescribed in this chapter.

33           ~~M.~~ N. The director and the department of environmental quality may  
34 enter into an interagency contract or agreement with the director of water  
35 resources under title 11, chapter 7, article 3 to implement the provisions  
36 of section 104 of CERCLA and to carry out the purposes of subsection ~~I~~ M  
37 of this section.

38           Sec. 3. Section 49-250, Arizona Revised Statutes, is amended to  
39 read:

40           49-250. Exemptions

41           A. The director may, by rule, exempt specifically described classes  
42 or categories of facilities from the aquifer protection permit  
43 requirements of this article on a finding either that there is no  
44 reasonable probability of degradation of the aquifer or that aquifer water  
45 quality will be maintained and protected because the discharges from the

1 facilities are regulated under other federal or state programs that  
2 provide the same or greater aquifer water quality protection as provided  
3 by this article.

4 B. The following are exempt from the aquifer protection permit  
5 requirement of this article:

6 1. Household and domestic activities.

7 2. Household gardening, lawn watering, lawn care, landscape  
8 maintenance and related activities.

9 3. The noncommercial use of consumer products generally available  
10 to and used by the public.

11 4. Ponds used for watering livestock and wildlife.

12 5. Mining overburden returned to the excavation site including any  
13 common material that has been excavated and removed from the excavation  
14 site and has not been subjected to any chemical or leaching agent or  
15 process of any kind.

16 6. Facilities used solely for surface transportation or storage of  
17 groundwater, surface water for beneficial use or reclaimed water that is  
18 regulated pursuant to section 49-203, subsection A, paragraph 6 for  
19 beneficial use.

20 7. Discharge to a community sewer system.

21 8. Facilities that are required to obtain a permit for the direct  
22 reuse of reclaimed water.

23 9. Leachate resulting from the direct, natural infiltration of  
24 precipitation through undisturbed regolith or bedrock if pollutants are  
25 not added to the leachate as a result of any material or activity placed  
26 or conducted by man on the ground surface.

27 10. Surface impoundments used solely to contain storm runoff, except  
28 for surface impoundments regulated by the federal clean water act.

29 11. Closed facilities. However, if the facility ever resumes  
30 operation, the facility shall obtain an aquifer protection permit and the  
31 facility shall be treated as a new facility for purposes of section  
32 49-243.

33 12. Facilities for the storage of water pursuant to title 45,  
34 chapter 3.1 unless reclaimed water is added.

35 13. Facilities using central Arizona project water for underground  
36 storage and recovery projects under title 45, chapter 3.1, article 6.

37 14. Water storage at a groundwater saving facility that has been  
38 permitted under title 45, chapter 3.1.

39 15. Application of water from any source, including groundwater,  
40 surface water or wastewater, to grow agricultural crops or for landscaping  
41 purposes, except as provided in section 49-247.

42 16. Discharges to a facility that is exempt pursuant to paragraph 6  
43 if those discharges are regulated pursuant to 33 United States Code  
44 section 1342.

1        17. Solid waste and special waste facilities when rules addressing  
2        aquifer protection are adopted by the director pursuant to section 49-761  
3        or 49-855 and those facilities obtain plan approval pursuant to those  
4        rules. This exemption shall only apply if the director determines that  
5        aquifer water quality standards will be maintained and protected because  
6        the discharges from those facilities are regulated under rules adopted  
7        pursuant to section 49-761 or 49-855 that provide aquifer water quality  
8        protection that is equal to or greater than aquifer water quality  
9        protection provided pursuant to this article.

10       18. Facilities used in:

11       (a) Corrective actions taken pursuant to chapter 6, article 1 of  
12       this title in response to a release of a regulated substance as defined in  
13       section 49-1001 except for those off-site facilities that receive for  
14       treatment or disposal materials that are contaminated with a regulated  
15       substance and that are received as part of a corrective action.

16       (b) Response or remedial actions undertaken pursuant to article 5  
17       of this chapter or pursuant to CERCLA.

18       (c) Corrective actions taken pursuant to ~~chapter 5, article 1 of~~  
19       ~~this title or~~ the resource conservation and recovery act of 1976, as  
20       amended (42 United States Code sections 6901 through 6992).

21       (d) Other remedial actions that have been reviewed and approved by  
22       the appropriate governmental authority and taken pursuant to applicable  
23       federal or state laws.

24       19. Municipal solid waste landfills as defined in section 49-701  
25       that have solid waste facility plan approval pursuant to section 49-762.

26       20. Storage, treatment or disposal of inert material.

27       21. Structures that are designed and constructed not to discharge  
28       and that are built on an impermeable barrier that can be visually  
29       inspected for leakage.

30       22. Pipelines and tanks designed, constructed, operated and  
31       regularly maintained so as not to discharge.

32       23. Surface impoundments and dry wells that are used to contain  
33       storm water in combination with discharges from one or more of the  
34       following activities or sources:

35       (a) Firefighting system testing and maintenance.

36       (b) Potable water sources, including waterline flushings.

37       (c) Irrigation drainage and lawn watering.

38       (d) Routine external building wash down without detergents.

39       (e) Pavement wash water where no spills or leaks of toxic or  
40       hazardous material have occurred unless all spilled material has first  
41       been removed and no detergents have been used.

42       (f) Air conditioning, compressor and steam equipment condensate  
43       that has not contacted a hazardous or toxic material.

44       (g) Foundation or footing drains in which flows are not  
45       contaminated with process materials.

1 (h) Occupational safety and health administration or mining safety  
2 and health administration safety equipment.

3 24. Industrial wastewater treatment facilities designed, constructed  
4 and operated as required by section 49-243, subsection B, paragraph 1 and  
5 using a treatment system approved by the director to treat wastewater to  
6 meet aquifer water quality standards prior to discharge, if that water is  
7 stored at a groundwater storage facility pursuant to title 45,  
8 chapter 3.1.

9 25. Any point source discharge caused by a storm event and  
10 authorized in a permit issued pursuant to section 402 of the clean water  
11 act.

12 26. Except for class V wells, any underground injection well covered  
13 by a permit issued under article 3.3 of this chapter or under 42 United  
14 ~~State~~ STATES Code section 300h-1(c). This exemption does not apply until  
15 the date that the United States environmental protection agency approves  
16 the department's underground injection control permit program established  
17 pursuant to article 3.3 of this chapter.

18 Sec. 4. Section 49-289.01, Arizona Revised Statutes, is amended to  
19 read:

20 49-289.01. Site boundary adjustment petitions

21 A. A person who owns property within a site may petition the  
22 director to adjust the boundaries to exclude the person's property from  
23 the site boundaries. The geographic area covered by the boundary  
24 adjustment petition shall be described by legal description.

25 B. The director shall review the petition based on the results of  
26 the remedial investigation. If the director determines that the property  
27 is either entirely or partially within the area of contamination or is  
28 predicted to be either entirely or partially within the area of  
29 contamination within two years, the director shall deny the petition to  
30 adjust the boundaries of the site. If the director determines based ~~upon~~  
31 ~~ON~~ the results of the remedial investigation that the property is not  
32 within the area of contamination and is not predicted to be within the  
33 area of contamination within two years, the director shall grant the  
34 petition to adjust the boundaries of the site.

35 ~~C. The director shall adopt rules to implement this section.~~

36 Sec. 5. Section 49-289.03, Arizona Revised Statutes, is amended to  
37 read:

38 49-289.03. Community involvement plan; community advisory  
39 boards; rules

40 A. The public shall receive notice and be provided an opportunity  
41 to comment to the director regarding the following actions taken by the  
42 director:

43 1. The placement of a site on the registry as provided in section  
44 49-287.01.



1           2. The selection of a remedy as provided in section 49-287.04.

2           3. Entering into a prospective purchaser agreement with a person  
3 pursuant to section 49-285.01.

4           4. Entering into a settlement with a responsible party pursuant to  
5 section 49-292, 49-292.01 or 49-292.02.

6           B. The director shall adopt rules to implement this section and to  
7 govern ~~the provision of~~ PROVIDING information to communities and community  
8 involvement areas that include how to disseminate information, the  
9 location of public information repositories and notice requirements.

10          C. Before it implements a remedial investigation as provided in  
11 section 49-287.03, subsection D the department shall develop a community  
12 involvement plan for each site that does all of the following:

13           1. Establishes a community advisory board.

14           2. Designates a spokesperson to inform the public and to act as a  
15 liaison between the department, the local government and the responsible  
16 party.

17           3. Provides for newsletters with current information about the  
18 status of remedial action at the site and other pertinent information to  
19 be distributed to residents within the site.

20           4. Schedules community advisory board meetings ~~and participates in~~  
21 ~~the scheduling of public meetings pursuant to section 49-287.01,~~  
22 ~~subsection E.~~

23          D. A selection committee shall be established for each site that is  
24 required to have a community involvement plan pursuant to section  
25 49-287.03, subsection D. The selection committee shall consist of the  
26 following members:

27           1. One representative of the department.

28           2. One representative of a potentially responsible party, an owner  
29 or operator of a facility within the site or an affected business or  
30 industry.

31           3. One local elected official.

32           4. Two community members who are not employees of any responsible  
33 party, the department or the local government.

34          E. Each community advisory board shall advise the department, the  
35 public and the responsible parties of issues, concerns and opportunities  
36 related to the expeditious cleanup of the site. Each community advisory  
37 board shall be composed of at least five but not more than twenty members.  
38 The members of the community advisory board shall be chosen to represent a  
39 diversified cross section of the community with an appropriate balance of  
40 interested parties and affected groups. Applications for membership on  
41 the community advisory board and the names of the applicants shall be  
42 publicly available. Community advisory board members may serve on more  
43 than one community advisory board and multiple sites may share a community  
44 advisory board to avoid unnecessary multiple boards.

1 F. Each community advisory board shall:

2 1. Within ninety days after appointment of members by the selection  
3 committee, elect cochairpersons and other officers if needed and shall  
4 develop a charter defining at a minimum operating procedures, membership  
5 terms and obligations, goals for developing issues, concerns and  
6 opportunities related to expeditious cleanup of the site, and any other  
7 anticipated activities of the board for identifying and improving the  
8 public's access and understanding of information regarding the remediation  
9 processes at the site.

10 2. ~~Meet at least four times each year~~ IN RESPONSE TO SITE  
11 ACTIVITIES OR A REQUEST FROM A COMMUNITY ADVISORY BOARD MEMBER OR A CITY,  
12 TOWN OR COUNTY IN WHICH THE SITE IS LOCATED, MEET with the department and  
13 any identified responsible parties to receive site briefings, progress  
14 reports and other pertinent information.

15 3. Coordinate with the department to establish local repositories  
16 for the dissemination of information about the site.

17 G. Each community advisory board may:

18 1. Make site visits and participate in public meetings related to  
19 cleanup opportunities and remedy selection decisions.

20 2. Participate in an annual meeting held by the department in each  
21 county that has a site undergoing a remedial investigation and feasibility  
22 study under section 49-287.03 or in the process of selecting or  
23 implementing a remedy for the purpose of facilitating public involvement  
24 and identifying funding priorities for site cleanups.

25 Sec. 6. Section 49-405, Arizona Revised Statutes, is amended to  
26 read:

27 49-405. Attainment area designations

28 A. The governor may designate the status and classification of  
29 areas of this state with respect to attainment of national ambient air  
30 quality standards.

31 B. The director shall adopt rules that ~~both:~~  
32 ~~1.~~ describe the geographic extent of attainment, nonattainment or  
33 unclassifiable areas of this state for all pollutants for which a national  
34 ambient air quality standard exists.

35 ~~2. Establish procedures and criteria for changing the designations~~  
36 ~~of areas that include all of the following:~~

37 ~~(a) Technical bases for proposed changes, including ambient air~~  
38 ~~quality data, types and distributions of sources of air pollution,~~  
39 ~~population density and projected population growth, transportation system~~  
40 ~~characteristics, traffic congestion, projected industrial and commercial~~  
41 ~~development, meteorology, pollution transport and political boundaries.~~

42 ~~(b) Provisions for review of and public comment on proposed changes~~  
43 ~~to area designations.~~

44 ~~(c) All area designations adopted by the administrator as of May~~  
45 ~~30, 1992.~~

1 C. On promulgation by the administrator of new or revised national  
2 ambient air quality standards for pollutants, the department shall develop  
3 proposed recommendations regarding designations for geographic areas of  
4 this state as being in attainment or nonattainment or unclassifiable with  
5 respect to that standard. The proposed recommendations shall be provided  
6 to the governor to assist the governor in submitting recommendations to  
7 the administrator pursuant to 42 United States Code section  
8 7407(d)(1)(A). The department shall develop the proposed recommendations  
9 as follows:

10 1. ~~no~~ NOT earlier than five months before the date by which the  
11 governor must make the recommendations and ~~no~~ NOT later than four months  
12 before that date, the department shall complete a draft of the proposed  
13 recommendations and a technical support document that explains the  
14 scientific and other bases for the draft proposal.

15 2. ~~no~~ NOT earlier than five months before the date by which the  
16 governor must make the recommendations and ~~no~~ NOT later than four months  
17 before that date, the department shall post the draft proposed  
18 recommendations and technical support document on the department's  
19 website. The department shall provide actual notice of the posting to  
20 counties and municipalities that would be included in a nonattainment area  
21 under the proposed recommendations and to any person who had previously  
22 requested actual notice of the draft documents. Actual notice of the  
23 posting may be provided by electronic or other means.

24 3. The website posting and actual notices prescribed in paragraph 2  
25 of this subsection shall include notice that until the close of the  
26 comment period, any person may submit written comments to the department  
27 regarding the draft proposed recommendations and technical support  
28 document. The notice shall also include the date, time and location of a  
29 public hearing for the department to receive verbal comments and answer  
30 questions concerning the draft proposal. The written comment period shall  
31 close and the hearing shall be held ~~no~~ NOT later than forty-six days  
32 before the date by which the governor must make the recommendations.

33 4. After the close of the comment period and after the public  
34 hearing and not later than one month before the date by which the governor  
35 must make the recommendations, the department shall finalize the proposed  
36 recommendations and technical support document and submit them to the  
37 governor. The department's final proposed recommendations and technical  
38 support document shall:

39 (a) Consider the comments received by the department pursuant to  
40 paragraph 3 of this subsection. For any area that is proposed to be  
41 designated a nonattainment area in the final proposed recommendations, the  
42 department shall with the submittal to the governor include a  
43 responsiveness summary that explains with reasonable particularity the  
44 department's consideration of and responses to comments received pursuant  
45 to paragraph 3 of this subsection.

1 (b) Be posted on the department's website within five days after  
2 the department's submittal to the governor. The posting shall include any  
3 responsiveness summary, and the department shall provide actual notice of  
4 the posting to counties and municipalities that would be included in a  
5 nonattainment area under the final proposed recommendations and to any  
6 person who had previously requested actual notice of the documents.  
7 Actual notice of the posting may be provided by electronic or other means.

8 D. The department shall post on its website a copy of the  
9 governor's recommendations within five days after the recommendations are  
10 submitted to the administrator.

11 E. If the administrator requires the governor's recommendations to  
12 be submitted six months after promulgation of the new or revised national  
13 ambient air quality standards or earlier, the time frames prescribed in  
14 subsections C and D shall be reduced by one-half.

15 Sec. 7. Section 49-425, Arizona Revised Statutes, is amended to  
16 read:

17 49-425. Rules; hearing

18 A. The director shall adopt such rules as ~~he~~ **THE DIRECTOR**  
19 determines are necessary and feasible to reduce the release into the  
20 atmosphere of air contaminants originating within the territorial limits  
21 of the state or any portion thereof and shall adopt, modify, ~~and~~ and amend  
22 reasonable standards for the quality of, ~~and~~ and emissions into, ~~the~~ the ambient  
23 air of the state for the prevention, control and abatement of air  
24 pollution. Additional standards shall be established for particulate  
25 matter emissions, sulfur dioxide emissions, ~~and~~ and other air contaminant  
26 emissions determined to be necessary and feasible for the prevention,  
27 control and abatement of air pollution. In fixing such ambient air  
28 quality standards, emission standards or standards of performance, the  
29 director shall give consideration but shall not be limited to the relevant  
30 factors prescribed by the clean air act.

31 B. No rule may be enacted or amended except after the director  
32 first holds a public hearing after ~~twenty~~ **THIRTY** days' notice of such  
33 hearing. The proposed rule, or any proposed amendment of a rule, shall be  
34 made available to the public at the time of notice of such hearing.

35 C. The department shall enforce the rules adopted by the director.

36 D. All rules enacted pursuant to this section shall be made  
37 available to the public at a reasonable charge ~~upon~~ **ON** request.

38 Sec. 8. Section 49-426.06, Arizona Revised Statutes, is amended to  
39 read:

40 49-426.06. State program for control of hazardous air  
41 pollutants

42 A. ~~After publication of the report prescribed by section 49-426.08,~~  
43 ~~subsection B,~~ The director shall by rule establish a state program for the  
44 control of hazardous air pollutants that meets the requirements of this

1 section. The program established pursuant to this section shall apply to  
2 the following sources:

3 1. Sources that emit or have the potential to emit with controls  
4 ten tons per year or more of any hazardous air pollutant or twenty-five  
5 tons per year or more of any combination of hazardous air pollutants.

6 2. Sources that are within a category designated pursuant to  
7 section 49-426.05 and that emit or have the potential to emit with  
8 controls one ton per year or more of any hazardous air pollutant or two  
9 and one-half tons per year of any combination of hazardous air pollutants.

10 B. After rules adopted pursuant to subsection A of this section  
11 become effective pursuant to section 41-1032, a person shall not commence  
12 the construction or modification of a source that is subject to this  
13 section without first obtaining a permit or permit revision that complies  
14 with section 49-426 and subsection C or D of this section. For purposes  
15 of determining whether a change constitutes a modification, the director  
16 shall by rule establish appropriate de minimis amounts for hazardous air  
17 pollutants that are not federally listed hazardous air pollutants. In  
18 establishing de minimis amounts, the director shall consider any relevant  
19 guidelines or criteria promulgated by the administrator. A physical  
20 change to a source or change in the method of operation of a source is not  
21 a modification subject to this section if the change satisfies any of the  
22 following conditions:

23 1. The change complies with section 112(g)(1) of the clean air act.

24 2. The change, together with any other changes implemented or  
25 planned by the source, qualifies the source for an alternative emission  
26 limitation pursuant to section 112(i)(5) of the clean air act.

27 3. The change is required under a standard imposed pursuant to  
28 section 112(d) or 112(f) of the clean air act and the change is  
29 implemented after the administrator promulgates the standard.

30 C. A permit or permit revision issued to a new or modified source  
31 that is subject to the state hazardous air pollutant program under  
32 subsection A, paragraph 1 of this section shall impose the maximum  
33 achievable control technology for the new source or modification, unless  
34 the applicant demonstrates pursuant to subsection D of this section that  
35 the imposition of maximum achievable control technology is not necessary  
36 to avoid adverse effects to human health or adverse environmental  
37 effects. A permit or permit revision issued to a new or modified source  
38 that is subject to the state hazardous air pollutant program under  
39 subsection A, paragraph 2 of this section shall impose hazardous air  
40 pollutant reasonably available control technology for the new source or  
41 modification, unless the applicant demonstrates pursuant to subsection D  
42 of this section that the imposition of hazardous air pollutant reasonably  
43 available control technology is not necessary to avoid adverse effects to  
44 human health or adverse environmental effects. When a reliable method of  
45 measuring emissions of a hazardous air pollutant subject to this section

1 is not available, the director shall not require compliance with a numeric  
2 emission limit for the pollutant but shall instead require compliance with  
3 a design, equipment, work practice or operational standard, or a  
4 combination thereof. Standards imposed pursuant to this subsection shall  
5 apply only to hazardous air pollutants emitted in amounts exceeding the de  
6 minimis amounts established by the administrator or by the director  
7 pursuant to subsection B of this section. The director shall not impose a  
8 standard under this subsection that would require the application of  
9 measures that are incompatible with measures required under a standard  
10 imposed pursuant to section 49-426.03, subsection B.

11 D. If the owner or operator of a new source or modification subject  
12 to this section establishes that the imposition of maximum achievable  
13 control technology or hazardous air pollutant reasonably available control  
14 technology is not necessary to avoid adverse effects to human health or  
15 adverse environmental effects by conducting a scientifically sound risk  
16 management analysis and submitting the results to the director with the  
17 permit application for the new source or modification, the director shall  
18 exempt the source from the imposition of such technology. The risk  
19 management analysis may take into account the following factors:

20 1. The estimated actual exposure of persons living in the airshed  
21 of the source.

22 2. Available epidemiological or other health studies.

23 3. Risks presented by background concentrations of hazardous air  
24 pollutants.

25 4. Uncertainties in risk assessment methodology or other health  
26 assessment techniques.

27 5. Health or environmental consequences from efforts to reduce the  
28 risk.

29 6. The technological and commercial availability of control methods  
30 beyond those otherwise required for the source and the cost of such  
31 methods.

32 E. Where maximum achievable control technology or hazardous air  
33 pollutant reasonably available control technology has been established in  
34 a general permit for a defined class of sources pursuant to subsection C  
35 of this section and section 49-426, subsection H, the owner or operator of  
36 a source within that class may obtain a variance from the standard by  
37 complying with subsection D of this section at the time the source applies  
38 to be permitted under the general permit. If the owner or operator makes  
39 the demonstration required by subsection D of this section and otherwise  
40 qualifies for the general permit, the director shall, in accordance with  
41 the procedures established pursuant to section 49-426, approve the  
42 application and issue a permit granting a variance from the specific  
43 provisions of the general permit relating to the standard. Except as  
44 otherwise modified by the variance, the general permit shall govern the  
45 source.

1 F. If the clean air act has established provisions, including  
2 specific schedules, for the regulation of source categories pursuant to  
3 section 112(e)(5) and 112(n) of the clean air act, those provisions and  
4 schedules shall apply to the regulation of those source categories under  
5 subsection B of this section.

6 G. For any category or subcategory of facilities licensed by the  
7 nuclear regulatory commission, the director shall not adopt or enforce any  
8 standard or limitation respecting emissions of radionuclides ~~which~~ THAT is  
9 more stringent than the standard or limitation adopted by the  
10 administrator pursuant to section 112 of the clean air act.

11 H. For purposes of subsection A of this section, in determining  
12 potential to emit, the director shall consider controls that are  
13 enforceable under any federal law or regulation, state or local law or  
14 rule or that are inherent in the design of the source.

15 I. In determining whether emissions from a source or modification  
16 exceed the thresholds prescribed by subsection A or B of this section, the  
17 director shall exclude particulate matter emissions that consist of  
18 natural crustal material and are produced either by natural forces, such  
19 as wind or erosion, or by anthropogenic activities, such as agricultural  
20 operations, excavation, blasting, drilling, handling, storage, earth  
21 moving, crushing, grinding or traffic over paved or unpaved roads, or  
22 other similar activities. ~~Nothing in~~ This subsection ~~shall~~ DOES NOT  
23 preclude the regulation of emissions of crustal materials as particulate  
24 matter pursuant to other sections of this chapter.

25 Sec. 9. Repeal

26 Section 49-426.08, Arizona Revised Statutes, is repealed.

27 Sec. 10. Section 49-459, Arizona Revised Statutes, is amended to  
28 read:

29 49-459. State plan; carbon emissions from power plants

30 A. The director, in consultation with the corporation commission,  
31 AND the governing bodies of affected public power entities as defined in  
32 section 30-801, electric utilities regulated by the corporation commission  
33 and independently owned electric ~~generating~~ GENERATION units shall  
34 develop, adopt and enforce a state plan to regulate the emissions of  
35 carbon dioxide from existing electric generation units in compliance with  
36 rules adopted by the administrator under section 111(d) of the clean air  
37 act.

38 ~~B. On or before the last day of each calendar quarter after July 3,~~  
39 ~~2015 and until submission of a complete state plan pursuant to subsection~~  
40 ~~F of this section, the director shall transmit a report on actions as~~  
41 ~~prescribed in subsection A of this section to the joint legislative review~~  
42 ~~committee on state plans relating to carbon dioxide emissions from~~  
43 ~~existing power plants.~~

1       ~~C.~~ B. The director may participate in one or more full or partial  
2 multijurisdictional plans or agreements, including plans or agreements  
3 with Indian tribes, for the purposes of complying with this section.

4       ~~D. Not less than ninety days before submitting a complete state~~  
5 ~~plan adopted pursuant to subsection A of this section to the~~  
6 ~~administrator, the director shall transmit the proposed state plan to the~~  
7 ~~joint legislative review committee on state plans relating to carbon~~  
8 ~~dioxide emissions from existing power plants for review pursuant to~~  
9 ~~section 41-1291.01. The committee may review the proposed state plan~~  
10 ~~concurrently with any public review required for the plan.~~

11       ~~E. The director may not transmit a state plan to the joint~~  
12 ~~legislative review committee on state plans relating to carbon dioxide~~  
13 ~~emissions from existing power plants until the administrator adopts rules~~  
14 ~~under section 111(d) of the clean air act.~~

15       ~~F. After review and comment by the joint legislative review~~  
16 ~~committee or if the committee fails to act in a timely manner pursuant to~~  
17 ~~section 41-1291.01, the director may submit a state plan to the~~  
18 ~~administrator for approval.~~

19       ~~G.~~ C. The director may adopt rules to implement subsection A of  
20 this section. ~~Any rulemaking conducted pursuant to this section is exempt~~  
21 ~~from the requirement under sections 41-1024 and 41-1052 to submit the rule~~  
22 ~~to the governor's regulatory review council for approval. Before filing a~~  
23 ~~final rule with the secretary of state, the director shall provide the~~  
24 ~~joint legislative review committee on state plans relating to carbon~~  
25 ~~dioxide emissions from existing power plants notice of any rules proposed~~  
26 ~~pursuant to this section at the same time that a notice of proposed~~  
27 ~~rulemaking is submitted to the secretary of state for publication in the~~  
28 ~~administrative register.~~

29       ~~H.~~ D. Submission of a state plan does not impair the ability of  
30 any affected state entity to challenge the lawfulness of the federal  
31 regulation of carbon dioxide emissions from existing electric **generating**  
32 **GENERATION** units and does not constitute a waiver of any claims.

33       Sec. 11. Repeal

34       Sections **49-542.06** and **49-542.07**, Arizona Revised Statutes, are  
35 repealed.

36       Sec. 12. Section 49-545, Arizona Revised Statutes, is amended to  
37 read:

38       **49-545. Agreement with independent contractor; qualifications**  
39 **of contractor; agreement provisions**

40       A. The director is authorized to enter into an emissions inspection  
41 agreement with one or more independent contractors, subject to public  
42 bidding, to provide for the construction, equipment, establishment,  
43 maintenance and operation of any official emissions inspection stations in  
44 such numbers and locations as may be required to provide vehicle owners  
45 reasonably convenient access to inspection facilities for the purpose of



1 obtaining compliance with this article and the rules adopted pursuant to  
2 this article. The agreement may provide that official inspection stations  
3 shall be placed in permanent or movable buildings at particular locations  
4 as well as in mobile units for conveyance from one preannounced particular  
5 location to another.

6 B. The director is prohibited from entering into an emissions  
7 inspection agreement with any independent contractor who:

8 1. Is engaged in the business of manufacturing, selling,  
9 maintaining or repairing vehicles, except that the independent contractor  
10 shall not be precluded from maintaining or repairing any vehicle owned or  
11 operated by the independent contractor.

12 2. Does not have the capability, resources or technical and  
13 management skill to adequately construct, equip, operate and maintain a  
14 sufficient number of official emissions inspection stations to meet the  
15 demand for inspection of every vehicle that is required to be submitted  
16 for inspection pursuant to this article.

17 C. All persons employed by the independent contractor in the  
18 performance of an emissions inspection agreement are deemed to be  
19 employees of the independent contractor and not of this state. An  
20 employee of the independent contractor may not wear any badge, insignia,  
21 patch, emblem, device, word or series of words that would tend to indicate  
22 that such person is employed by this state. Employees of the independent  
23 contractor are specifically prohibited under this subsection from wearing  
24 the flag of this state, the words "state of Arizona", the words "official  
25 emissions inspection program" or any similar emblem or phrase.

26 D. The emissions inspection agreement authorized by this section  
27 shall contain, in addition to any other provisions, provisions relating to  
28 the following:

29 1. A contract term or duration of up to seven years with reasonable  
30 compensation to the contractor if the provisions of this article are  
31 repealed.

32 2. That nothing in the agreement or contract shall require the  
33 state to purchase any asset or assume any liability if such agreement or  
34 contract is not renewed.

35 3. The minimum requirements for adequate staff, equipment,  
36 management and hours and place of operation of official emissions  
37 inspection stations.

38 4. The submission of such reports and documentation concerning the  
39 operation of official emissions inspection stations as the director and  
40 the auditor general may require.

41 5. Surveillance by the department of environmental quality and the  
42 auditor general to ensure compliance with vehicular emissions standards,  
43 procedures, rules and laws.

44 6. The right of this state, on providing reasonable notice to the  
45 independent contractor, to terminate the contract with the independent

1 contractor and the right of this state on termination of the contract to  
2 assume operation of the vehicle emissions inspection program through  
3 another contract provider or otherwise.

4 7. The right of this state on termination of the term of the  
5 agreement or on assumption of the operation of the program to have  
6 transferred and assigned to it for reasonable compensation any interest in  
7 land, buildings, improvements, equipment, parts, tools and services used  
8 by the independent contractors in their operation of the program.

9 8. The right of this state on termination of the term of the  
10 agreement or assumption of the operation of the program to have  
11 transferred and assigned to it any contract rights, ~~and~~ and related  
12 obligations, ~~for~~ for land, buildings, improvements, equipment, parts, tools  
13 and services used by the independent contractors in their operation of the  
14 program.

15 9. The obligation of the independent contractors to provide in any  
16 agreement to be executed by them, and to maintain in any agreements  
17 previously executed by them, for land, buildings, improvements, equipment,  
18 parts, tools and services used in their operation of the program for the  
19 right of the independent contractors to assign to this state any of their  
20 rights and obligations under such contract.

21 10. The right of the independent contractor, ~~in the event~~ IF the  
22 contract is terminated and the state elects to assume operation of the  
23 vehicle emissions inspection program through another contractor or  
24 otherwise, to retain and not transfer to the state any interest in or any  
25 contract rights and related obligations for improvements, equipment,  
26 parts, tools and services that are used by the independent contractor in  
27 the operation of the program and that are proprietary in nature, as may be  
28 more specifically set forth in the contract.

29 11. The amounts of liquidated damages payable by this state to the  
30 independent contractor if the state exercises its right to terminate the  
31 contract at the conclusion of each year of the contract pursuant to  
32 paragraph 6 of this subsection. The damages recoverable by the  
33 independent contractor if the state exercises its right to terminate the  
34 contract are limited to the liquidated damages specified in the contract.

35 12. Any other provision deemed necessary by the director for the  
36 administration or enforcement of the emissions inspection agreement.

37 E. The department shall establish bid specifications or contract  
38 terms for a contract with an independent contractor as provided in this  
39 section, review bids for an award of a contract with the independent  
40 contractors and negotiate any terms of a contract with the independent  
41 contractors.

42 F. In evaluating bids for an emissions inspection agreement,  
43 additional consideration may not be given to a bid solely on the basis of  
44 the type of conditioning mode proposed in the bid.

1 G. After a contract is awarded to an independent contractor, the  
2 director may modify the contract with the independent contractor to allow  
3 the contractor and the state to comply with amendments to applicable  
4 statutes or rules. These modifications are exempt from public bidding and  
5 may include the addition, deletion or alteration of any contract provision  
6 in order to make compliance feasible, including inspection fees and  
7 services rendered. Provisions relating to contract term or duration may  
8 be amended. ~~Any proposed modification or amendment to the contract is~~  
9 ~~subject to prior review by the joint legislative budget committee.~~ If the  
10 director cannot negotiate an acceptable modification of the contract, the  
11 state may terminate the contract.

12 Sec. 13. Section 49-724, Arizona Revised Statutes, is amended to  
13 read:

14 49-724. Distribution of appropriated funds to local  
15 governments

16 The department ~~shall~~ MAY develop criteria in consultation with local  
17 governments for the distribution of funds appropriated to county, city or  
18 town management agencies or their designated representatives, if funds  
19 have been appropriated for this purpose.

20 Sec. 14. Section 49-831, Arizona Revised Statutes, is amended to  
21 read:

22 49-831. Definitions

23 In this article, unless the context otherwise requires:

24 1. "Agency" means this state or a state agency, county,  
25 municipality or political subdivision.

26 2. "Collection" means the act of picking up post-consumer secondary  
27 materials from homes, businesses, governmental agencies, institutions or  
28 industrial sites.

29 3. "Consumer" means a person who purchases a product for use,  
30 consumption or any purpose other than resale.

31 ~~4. "Consumer of newsprint" means a person who uses newsprint in a~~  
32 ~~commercial printing operation or in a commercial publishing operation.~~

33 ~~5. "Disposition" means the transportation, placement, reuse, sale,~~  
34 ~~donation, transfer or temporary storage for a period of not more than six~~  
35 ~~months of designated recyclable materials for all possible uses, except~~  
36 ~~for disposal as solid waste.~~

37 ~~6.~~ 4. "Municipal or county solid waste" means any garbage, trash,  
38 rubbish, refuse, sludge from a waste treatment plant, water supply  
39 treatment plant or pollution control facility and other discarded  
40 material, including solid, liquid, semisolid or contained gaseous material  
41 but not including domestic sewage or hazardous waste.

42 ~~7.~~ 5. "Municipality" means an incorporated city or town with a  
43 population of more than five thousand persons.

44 ~~8.~~ 6. "Natural resources" means the supply of materials, not made  
45 by man, that are used for making goods.

~~9. "Newsprint" means uncoated paper, whether supercalendered or machine finished, including the type generally used for the publication of newspapers, commercial advertising inserts, directories or commercial advertising mailers, which is made primarily from mechanical wood pulps combined with some chemical wood pulp. Newsprint includes paper made from old newspapers which have been deinked, using the recycled pulp in lieu of virgin pulp. Newsprint includes all grades of paper sold as newsprint, supercalendered (SC) uncoated groundwood or machine finished (MF) uncoated groundwood.~~

~~10.~~ 7. "Paper" means newspaper, high grade office paper, fine paper, bond paper, offset paper, xerographic paper, duplicator paper and related types of cellulosic material containing not more than ten ~~per cent~~ PERCENT by weight or volume of noncellulosic material such as laminates, binders, coatings or saturants.

~~11. "Paper product" means paper items or commodities, including paper napkins, towels, corrugated paper and related types of cellulosic products containing not more than ten per cent by weight or volume of noncellulosic material such as laminates, binders, coatings or saturants.~~

~~12.~~ 8. "Plastic container" means a container ~~which~~ THAT is hermetically sealed or made airtight with a metal or plastic cap with a minimum wall thickness of not less than 0.010 inches and ~~which~~ THAT is composed of thermoplastic synthetic polymeric materials.

~~13.~~ 9. "Plastics" means a specific polymer or mix of polymers in combination with various amounts of plasticizers, stabilizers, colorants, fillers and other organic and inorganic compounds.

~~14.~~ 10. "Post-consumer material":

(a) Means a discard generated by a business or residence that has fulfilled its useful life. ~~Post-consumer material does include~~

(b) INCLUDES discards from industrial or manufacturing processes.

~~15.~~ 11. "Process" or "processing" means the reduction, separation, recovery, conversion or recycling of solid waste.

~~16.~~ 12. "Recyclable material" means post-consumer materials ~~which~~ THAT may be collected, separated, cleansed, treated or reconstituted and returned to the economic stream in the form of raw materials or products.

~~17.~~ 13. "Recycled" means a process by which post-consumer materials are collected, separated, cleansed, treated or reconstituted and returned to the economic stream in the form of raw materials or products.

~~18. "Recycled-content newsprint" means newsprint which contains post-consumer wastepaper.~~

~~19.~~ 14. "Recycled materials" means those materials ~~which~~ THAT have been separated from the municipal or county solid waste stream, processed and returned to the economic stream in the form of raw materials or products.

~~20. "Recycled paper" means paper products which have been manufactured from materials otherwise destined for the waste stream.~~

1       ~~21.~~ 15. "Recycling" means the process of collecting, separating,  
2       cleansing, treating and reconstituting post-consumer materials that would  
3       otherwise become solid waste and returning them to the economic stream in  
4       the form of raw material for reconstituted products ~~which~~ THAT meet the  
5       quality standards necessary to be used in the marketplace, but does not  
6       include incineration or other similar processes.

7       ~~22. "Recycling equipment" means any machinery or apparatus used~~  
8       ~~exclusively to recycle post-consumer waste material or manufacturing~~  
9       ~~machinery used exclusively to produce finished products composed~~  
10      ~~substantially of post-consumer waste materials.~~

11      ~~23.~~ 16. "Recycling program" means the program prepared and adopted  
12      by this state and approved by the department to implement the recycling  
13      program goals of this state or a program prepared and adopted by a county  
14      or municipality of this state.

15      ~~24.~~ 17. "Reuse" means the return of a commodity into the economic  
16      stream for use in the same kind of application as before without change in  
17      its identity.

18      ~~25.~~ 18. "Source reduction" means any action ~~which~~ THAT causes a net  
19      reduction in the generation of solid waste and includes reducing the use  
20      of nonrecyclable materials, replacing disposable materials and products  
21      with reusable materials and products, reducing packaging, reducing the  
22      amount of yard waste generated, establishing garbage rate structures with  
23      incentives to reduce the amount of wastes that generators produce and  
24      increasing the efficiency of the use of paper, cardboard, glass, metal,  
25      plastic and other materials in the manufacturing process. Source  
26      reduction does not include the following:

27      (a) Steps taken after the material becomes solid waste or actions  
28      ~~which~~ THAT would impact air or water resources in lieu of land, such as  
29      incineration or pyrolysis or burning for energy recovery.

30      (b) Replacing disposable material or products with alternative  
31      disposable materials or products.

32      ~~26.~~ 19. "Storage" means the containment or holding of materials,  
33      either on a temporary or long-term basis, in such a manner as not to  
34      constitute disposal of such materials.

35      ~~27.~~ 20. "Used oil" means any oil ~~which~~ THAT has been refined from  
36      crude or synthetic oil and, as a result of use, storage or handling, ~~which~~  
37      THAT has become unsuitable for its original purpose due to the presence of  
38      impurities or loss of original properties but ~~which~~ THAT may be suitable  
39      for further use and may be economically recyclable.

40      ~~28.~~ 21. "Waste generator" means a person, business, government  
41      agency or other organization that produces solid waste.

42      ~~29.~~ 22. "Waste stream" means the solid waste material output of a  
43      community, region or facility.

44      ~~30.~~ 23. "Waste tire" means a tire that is no longer suitable for  
45      its original intended purpose because of wear, damage or defect.

1       ~~31.~~ 24. "Wastepaper" means recyclable paper and paperboard,  
2 including high grade office paper, computer paper, fine paper, bond paper,  
3 offset paper, xerographic paper, duplicator paper and corrugated paper.

4       Sec. 15. Repeal

5       Section 49-834, Arizona Revised Statutes, is repealed.

6       Sec. 16. Heading change

7       The article heading of title 49, chapter 5, article 1, Arizona  
8 Revised Statutes, is changed from "HAZARDOUS WASTE DISPOSAL AT STATE  
9 SITES" to "GENERAL PROVISIONS".

10      Sec. 17. Repeal

11      Sections 49-902, 49-903, 49-904 and 49-905, Arizona Revised  
12 Statutes, are repealed.

13      Sec. 18. Section 49-923, Arizona Revised Statutes, is amended to  
14 read:

15      49-923. Compliance orders; civil penalties; injunctive relief

16      A. If the director has reasonable cause to believe that a person is  
17 violating this article ~~or article 1 of this chapter~~ or a permit or rule  
18 issued or adopted pursuant to this article ~~or article 1 of this chapter~~,  
19 the director may serve ~~upon~~ ON the person an order requiring compliance  
20 with such provision, permit or rule. The order shall state with  
21 reasonable particularity the nature of the violation and shall specify  
22 either immediate compliance or a time period for compliance ~~which~~ THAT the  
23 director determines is reasonable, taking into account the seriousness of  
24 the violation and any good faith efforts to comply with applicable legal  
25 requirements. The alleged violator may request a hearing pursuant to  
26 title 41, chapter 6, article 10.

27      B. If a violator fails to take corrective action within the time  
28 specified in a compliance order issued pursuant to subsection A of this  
29 section, the director may issue an order assessing a civil penalty of not  
30 more than ~~one thousand dollars~~ \$1,000 for each day of continued  
31 noncompliance with the order. The alleged violator may request a hearing  
32 pursuant to title 41, chapter 6, article 10. An attorney or corporate  
33 officer or employee of a corporation may represent the corporation at that  
34 hearing.

35      C. Before issuing an order assessing a civil penalty pursuant to  
36 subsection B of this section, the director shall give reasonable notice of  
37 ~~his~~ THE DIRECTOR'S intent to issue the order and the circumstances of the  
38 case to the attorney general.

39      D. If the director has reasonable cause to believe that an order  
40 issued pursuant to this section is being violated or that a person is  
41 engaging in an act or practice ~~which~~ THAT constitutes a violation for  
42 which ~~he~~ THE DIRECTOR is authorized to issue an order pursuant to this  
43 section, the director or the attorney general may apply to the superior  
44 court in the county in which the violation is occurring for a temporary

1 restraining order, preliminary injunction or permanent injunction. Such  
2 action has precedence over all other matters pending in the court.

3 E. All civil penalties assessed pursuant to this section shall be  
4 deposited, pursuant to sections 35-146 and 35-147, in the state general  
5 fund.

6 Sec. 19. Section 49-929, Arizona Revised Statutes, is amended to  
7 read:

8 49-929. Annual registration of hazardous waste treatment,  
9 storage and disposal facilities, transporters and  
10 generators; fee; disposition of revenue

11 A. All hazardous waste treatment, storage and disposal facilities,  
12 hazardous waste transporters and hazardous waste generators, except  
13 hazardous waste resource recovery facilities as defined in section 49-930,  
14 shall register annually with the department at the time and in the manner  
15 prescribed by the director. The registration is valid for one year from  
16 the date of registration.

17 B. The application for registration shall be accompanied by a  
18 registration fee based on the following:

19 1. Hazardous waste treatment, storage and disposal facilities, ~~one~~  
20 ~~thousand five hundred dollars~~ \$1,500 plus ~~two dollars~~ \$2 per ton of  
21 hazardous waste received for treatment, storage for more than ten days or  
22 disposal during the preceding calendar year, ~~except that a hazardous waste~~  
23 ~~disposal facility established under article 1 of this chapter, shall be~~  
24 ~~subject to any fees assessed pursuant to section 49-904, and shall not be~~  
25 ~~subject to the two dollar per ton component of the fee imposed by this~~  
26 ~~section.~~

27 2. Hazardous waste transporters, ~~two hundred dollars~~ \$200.

28 3. Large quantity hazardous waste generators ~~which~~ THAT generate  
29 one thousand kilograms per month or more, ~~three hundred dollars~~ \$300.

30 4. Small quantity hazardous waste generators ~~which~~ THAT generate  
31 between one hundred and one thousand kilograms per month, ~~one hundred~~  
32 ~~dollars~~ \$100.

33 C. All monies collected under this section shall be deposited in  
34 the water quality assurance revolving fund established by section  
35 49-282. The director may authorize expenditures from the fund, pursuant  
36 to section 49-282, subsection E, to pay the reasonable and necessary costs  
37 of administering the registration program.

38 Sec. 20. Section 49-964, Arizona Revised Statutes, is amended to  
39 read:

40 49-964. Review of reports and plans; enforcement; contempt

41 A. The department shall review the submissions required under this  
42 article, including the plan and any amendments and reports, to determine  
43 if the submission is complete and correct as prescribed in sections 49-962  
44 and 49-963.

1       B. If a facility required to submit a plan or report under this  
2 article files an inadequate submission, the department shall notify the  
3 facility in writing of the inadequacy, identifying the specific  
4 deficiencies. In reviewing the adequacy of a plan or report, or any  
5 amendment to a plan or report, the department shall base its determination  
6 on whether the plan, report or amendment is complete and correct in  
7 accordance with the requirements of this article. If the submission is  
8 inadequate, the department shall specify a reasonable time of at least  
9 ninety days within which the facility shall file a modified submission  
10 addressing the specified deficiencies.

11       C. If, after the specified time, the facility has not filed a  
12 modified submission or the modified submission is otherwise inadequate,  
13 the department may enter a formal notice of inadequacy. ~~The department~~  
14 ~~shall place a copy or abstract of the notice of inadequacy in the~~  
15 ~~department's annual report.~~

16       D. If a formal notice of inadequacy is entered, the department,  
17 pursuant to title 41, chapter 6, article 10, may hold a public hearing  
18 after providing written notice to the facility. The department may issue  
19 an administrative order requiring the facility to correct the  
20 deficiencies. If the facility fails to comply with an administrative  
21 order, the department may enforce that order in a judicial proceeding  
22 including an action for contempt.

23       E. In reviewing for adequacy an amendment or annual progress  
24 report, the department's review is restricted to the scope of the current  
25 submission. Previous amendments to the plan and annual progress reports  
26 that were found to be adequate are not subject to review.

27       F. If a facility required under this article to submit a plan or  
28 annual progress report fails to submit the plan or report, the department  
29 shall order that facility to submit an adequate plan or report within a  
30 reasonable time period of at least ninety days. If the facility fails to  
31 develop an adequate plan or progress report in response to that order  
32 within the time period specified in that order, the department may do any  
33 of the following:

34       1. Under procedures established by rule, provide for inspecting the  
35 facility, gathering necessary information and preparing a plan or progress  
36 report for the facility at the facility's expense.

37       2. Pursuant to title 41, chapter 6, article 10, enter an  
38 administrative order for compliance that is enforceable in a judicial  
39 proceeding including an action for contempt.

40       G. The attorney general, at the request of the director, may bring  
41 an action in superior court to recover the department's costs incurred  
42 under subsection F of this section. The facility owner or operator may  
43 appeal the department's determination to proceed under this subsection and  
44 subsection F of this section pursuant to title 41, chapter 6, article 10  
45 before the department prepares the plan or progress report. Except as



1 provided in section 41-1092.08, subsection H, any final agency order  
2 issued pursuant to this section is subject to judicial review pursuant to  
3 title 12, chapter 7, article 6.

4 H. Failure to implement the pollution prevention plan is a  
5 violation of this article and the attorney general, at the request of the  
6 director, may bring an action in superior court to compel implementation  
7 of the provisions of an approved plan, and the director pursuant to title  
8 41, chapter 6, article 10 may enter an administrative order for compliance  
9 that is enforceable in a judicial proceeding including an action for  
10 contempt.

11 I. Reports and submissions made to the department pursuant to this  
12 article shall be deemed adequate for purposes of this article unless the  
13 department notifies the facility in writing of any deficiencies within  
14 ninety days ~~of~~ AFTER receipt of the submission.

APPROVED BY THE GOVERNOR MARCH 23, 2021.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MARCH 23, 2021.